

Pezzi, Stephen (CIV)

From: Pezzi, Stephen (CIV)
Sent: Wednesday, December 09, 2020 3:05 PM
To: Araceli Martínez-Olguín
Cc: 'Colangelo, Matthew'; Karen Tumlin
Subject: RE: EDNY DACA - Draft Joint Status Report

Thanks very much for the call. To confirm, per our call, we have agreed that Defendants will not be preparing a Federal Register notice on these subjects, and thus neither side will address that issue in our respective drafts.

Stephen M. Pezzi

Trial Attorney
United States Department of Justice
Civil Division - Federal Programs Branch
1100 L Street NW
Washington, DC 20005
(202) 305-8576 | stephen.pezzi@usdoj.gov

From: Pezzi, Stephen (CIV)
Sent: Wednesday, December 09, 2020 2:56 PM
To: Araceli Martínez-Olguín <martinez-olguin@nilc.org>
Subject: RE: EDNY DACA - Draft Joint Status Report

Araceli – could you call me quickly at the number below? Just wanted to clarify something briefly.

Stephen M. Pezzi

Trial Attorney
United States Department of Justice
Civil Division - Federal Programs Branch
1100 L Street NW
Washington, DC 20005
(202) 305-8576 | stephen.pezzi@usdoj.gov

From: Araceli Martínez-Olguín <martinez-olguin@nilc.org>
Sent: Wednesday, December 09, 2020 12:49 PM
To: Pezzi, Stephen (CIV) <spezzi@CIV.USDOJ.GOV>; 'Colangelo, Matthew' <Matthew.Colangelo@ag.ny.gov>; 'Muneer Ahmad' <muneer.ahmad@ylsclinics.org>; karen.tumlin@justiceactioncenter.org; 'Khan, Sania' <Sania.Khan@ag.ny.gov>; 'Wardenski, Joseph' <Joseph.Wardenski@ag.ny.gov>; 'Finkelstein, Alex' <Alex.Finkelstein@ag.ny.gov>; 'Dasgupta, Anisha' <Anisha.Dasgupta@ag.ny.gov>; batallavidal_Iso@mailman.yale.edu; 'Parker, Joshua' <Joshua.Parker@ag.ny.gov>; 'Jessica Young' <jessica.young@maketheroadny.org>; Mayra Joachin <Joachin@nilc.org>; Trudy Rebert <rebert@nilc.org>; Batalla <Batalla@nilc.org>; batalla@maketheroadny.org
Cc: Rosenberg, Brad (CIV) <BRosenbe@civ.usdoj.gov>; Westmoreland, Rachael (CIV) <rwestmor@CIV.USDOJ.GOV>; Thorp, Galen (CIV) <GThorp@civ.usdoj.gov>; Marutollo, Joseph (USANYE) <JMarutollo@usa.doj.gov>; Early, Cormac A. (CIV) <cearly@CIV.USDOJ.GOV>
Subject: RE: EDNY DACA - Draft Joint Status Report

Yes, we are happy to speak at 1:30pm, and we can use this conference line.

(267) 930-4000,,274923685#

Araceli Martínez-Olguín | Supervising Attorney

(pronouns: she/hers/ella)

National Immigration Law Center

t: 213.797.7420 | f: 213.639.3911 | e: martinez-olguin@nilc.org

From: Pezzi, Stephen (CIV) <Stephen.Pezzi@usdoj.gov>

Sent: Wednesday, December 9, 2020 9:38 AM

To: Araceli Martínez-Olguín <martinez-olguin@nilc.org>; 'Colangelo, Matthew' <Matthew.Colangelo@ag.ny.gov>; 'Muneer Ahmad' <muneer.ahmad@ylsclinics.org>; karen.tumlin@justiceactioncenter.org; 'Khan, Sania' <Sania.Khan@ag.ny.gov>; 'Wardenski, Joseph' <Joseph.Wardenski@ag.ny.gov>; 'Finkelstein, Alex' <Alex.Finkelstein@ag.ny.gov>; 'Dasgupta, Anisha' <Anisha.Dasgupta@ag.ny.gov>; batallavidal_Iso@mailman.yale.edu; 'Parker, Joshua' <Joshua.Parker@ag.ny.gov>; 'Jessica Young' <jessica.young@maketheroadny.org>; Mayra Joachin <Joachin@nilc.org>; Trudy Rebert <rebert@nilc.org>; Batalla <Batalla@nilc.org>; batalla@maketheroadny.org
Cc: Rosenberg, Brad (CIV) <Brad.Rosenberg@usdoj.gov>; Westmoreland, Rachael (CIV) <Rachael.Westmoreland@usdoj.gov>; Thorp, Galen (CIV) <Galen.Thorp@usdoj.gov>; Marutollo, Joseph (USANYE) <Joseph.Marutollo@usdoj.gov>; Early, Cormac A. (CIV) <Cormac.A.Early@usdoj.gov>
Subject: RE: EDNY DACA - Draft Joint Status Report

Are you available at 1:30 PM to discuss further? If so, can you please circulate a dial in?

Stephen M. Pezzi

Trial Attorney

United States Department of Justice

Civil Division - Federal Programs Branch

1100 L Street NW

Washington, DC 20005

(202) 305-8576 | stephen.pezzi@usdoj.gov

From: Araceli Martínez-Olguín <martinez-olguin@nilc.org>

Sent: Wednesday, December 09, 2020 11:59 AM

To: Pezzi, Stephen (CIV) <spezzi@CIV.USDOJ.GOV>; 'Colangelo, Matthew' <Matthew.Colangelo@ag.ny.gov>; 'Muneer Ahmad' <muneer.ahmad@ylsclinics.org>; karen.tumlin@justiceactioncenter.org; 'Khan, Sania' <Sania.Khan@ag.ny.gov>; 'Wardenski, Joseph' <Joseph.Wardenski@ag.ny.gov>; 'Finkelstein, Alex' <Alex.Finkelstein@ag.ny.gov>; 'Dasgupta, Anisha' <Anisha.Dasgupta@ag.ny.gov>; batallavidal_Iso@mailman.yale.edu; 'Parker, Joshua' <Joshua.Parker@ag.ny.gov>; 'Jessica Young' <jessica.young@maketheroadny.org>; Mayra Joachin <Joachin@nilc.org>; Trudy Rebert <rebert@nilc.org>; Batalla <Batalla@nilc.org>; batalla@maketheroadny.org
Cc: Rosenberg, Brad (CIV) <BRosenbe@civ.usdoj.gov>; Westmoreland, Rachael (CIV) <rwestmor@CIV.USDOJ.GOV>; Thorp, Galen (CIV) <GThorp@civ.usdoj.gov>; Marutollo, Joseph (USANYE) <JMarutollo@usa.doj.gov>; Early, Cormac A. (CIV) <cearly@CIV.USDOJ.GOV>
Subject: RE: EDNY DACA - Draft Joint Status Report

Counsel,

Thank you for this email and draft of the joint status report. We think this is a good start but would benefit from discussion regarding a few open issues – we can talk any time before 3pm and look forward to resolving these issues with you.

1. We appreciate that paras. 2 and 5 of your draft would provide near-term notice to class members that their one-year EADs have now been extended to two years, as well as public guidance regarding the validity of these extended EADs. But as we have indicated on our prior calls, it is essential for affected class members that they also be issued new

EADs; a one-year EAD plus a slip of paper from DHS is an appropriate near-term solution to the unlawful issuance of one-year EADs, but does not put class members in the same position as if the EADs had been lawfully issued with the proper two-year term at the outset. We are mindful of your fraud concerns and therefore propose that the second EAD be valid from a date one day after expiration of the current EAD. We also note that is consistent with agency practice to issue second DACA EADs for overlapping periods of time to individuals adjusting status. The following language to be added to the joint status report would address this issue:

<< No later than one month before the expiration of their current EADs, all relevant class members will be issued and mailed new EADs which are valid from the day after their current EAD expires and valid for the duration of their current EAD. >>

2. You originally proposed that notice of the extension of one-year EADs be accomplished by publication in the Federal Register, but later advised us that you would not agree to proceed by Federal Register notice. We note that in today's Federal Register, DHS in fact published a notice automatically extending the validity of certain TPS documentation, including EADs. See 85 Fed. Reg. 79,208 (Dec. 9, 2020), at <https://www.govinfo.gov/content/pkg/FR-2020-12-09/pdf/2020-27154.pdf>. In light of the agency's decision to proceed by Federal Register notice just today on what appears to be a similar issue, we'd like to revisit proceeding by Federal Register notice in this case. Doing so would provide more appropriate relief to the class, could replace paras. 2 and 5 in your draft joint status report, and does not seem to present any practical problems to the agency.

3. We would like an opportunity to review the documents Defendants would be required to draft pursuant to paras. 1 to 4 in your draft joint status report, and propose to include the following language: << No later than December 18, 2020, Defendants will produce to class counsel the proposed notice(s) referenced in agreements 1-4. Class counsel will provide Defendants their feedback within two days of receiving the proposed notice(s). >>

4. Paragraph 5 in your draft requires Defendants to prepare guidance "informing the general public and employers about the significance of these changes, and employers' legal obligations as to respecting the validity of these extended EADs." As we have discussed with you, EADs are also used by class members for purposes other than I-9 verification, including to apply for driver licenses or non-driver identification cards. We propose that para. 5 be revised to indicate that Defendants' guidance (or the Federal Register notice) will also make clear that extended EADs should be treated as valid two-year EADs for all purposes for which EADs are used, including when verifying eligibility for state services or benefits.

5. Your draft proposes that Defendants send notice to class members by January 8, 2021. As we discussed on our meet-and-confer, we read the Court's Dec. 4 Order as directing Defendants to be prepared "to provide mailed notice to all class members by December 31, 2020." Given that the Court has already considered the timing question, and given the importance of providing class members with appropriate notice as soon as possible, we are not in position to agree to extend the Court-ordered deadline by eight days.

As noted, we can make ourselves available at any time before 3pm to discuss.

Thank you,
Araceli

Araceli Martínez-Olguín | Supervising Attorney
(pronouns: she/hers/ella)

National Immigration Law Center

t: 213.797.7420 | f: 213.639.3911 | e: martinez-olguin@nilc.org

From: Pezzi, Stephen (CIV) <Stephen.Pezzi@usdoj.gov>

Sent: Tuesday, December 8, 2020 2:46 PM

To: Araceli Martínez-Olguín <martinez-olguin@nilc.org>; 'Colangelo, Matthew' <Matthew.Colangelo@ag.ny.gov>;

'Muneer Ahmad' <muneer.ahmad@ylsclinics.org>; karen.tumlin@justiceactioncenter.org; 'Khan, Sania' <Sania.Khan@ag.ny.gov>; 'Wardenski, Joseph' <Joseph.Wardenski@ag.ny.gov>; 'Finkelstein, Alex' <Alex.Finkelstein@ag.ny.gov>; 'Dasgupta, Anisha' <Anisha.Dasgupta@ag.ny.gov>; batallavidal_iso@mailman.yale.edu; 'Parker, Joshua' <Joshua.Parker@ag.ny.gov>; 'Jessica Young' <jessica.young@maketheroadny.org>; Mayra Joachin <Joachin@nilc.org>; Trudy Rebert <rebert@nilc.org>; Batalla <Batalla@nilc.org>; batalla@maketheroadny.org
Cc: Rosenberg, Brad (CIV) <Brad.Rosenberg@usdoj.gov>; Westmoreland, Rachael (CIV) <Rachael.Westmoreland@usdoj.gov>; Thorp, Galen (CIV) <Galen.Thorp@usdoj.gov>; Marutollo, Joseph (USANYE) <Joseph.Marutollo@usdoj.gov>; Early, Cormac A. (CIV) <Cormac.A.Early@usdoj.gov>
Subject: EDNY DACA - Draft Joint Status Report

Counsel,

Per our phone conversation yesterday morning, as promised, attached is a draft of a joint status report in the above-captioned matters. As you know, this is due tomorrow at 5 PM. (I have a conflict starting tomorrow at 4 PM, so I am hopeful that we can wrap this up well before 4 PM tomorrow, if at all possible.)

I am pleased to report that Defendants have agreed to the vast majority of Plaintiffs' proposals, as well as Plaintiffs' proposed timelines (30 days). This was no small task, particularly given the timing. To be clear, this includes not only the subject of extending the validity of 1-year DACA/EADs to two years, but also sending notice to other members of the class, who had their first-time requests for DACA (or requests for advance parole) rejected, pursuant to the Wolf Memorandum, on or after June 30, 2020. We have also proposed new language about the agency's willingness to publish and distribute guidance to the general public and to employers specifically, to ensure that everyone is aware of these changes, and in particular to ensure that employers are aware of their obligations to respect the validity of these documents.

My understanding is that the only subject on which we have not fully agreed to your latest round of proposals is the subject of actually clawing back and replacing the existing, physical copies of 1-year EAD documents with new 2-year EAD documents (rather than mailing notice that the validity of each existing 1-year EAD has been extended, in a manner that could be presented to employers as definitive and formal proof of the extension). For some of the reasons already discussed, as well as additional reasons I am happy to discuss further if you would like, the agency continues to have significant concerns about that proposal—not just because of cost and burden, but also because of unavoidable fraud and security risks necessarily created by the existence of multiple EAD documents for a single individual being out there in the world. In addition, and perhaps most importantly, the agency's proposal, as reflected in this draft, would provide complete relief, and would (to my knowledge) accomplish everything that actually issuing new EADs would accomplish (without the added risk of fraud, burden, and expense). For those reasons, we are hopeful that this proposal will meet everyone's goals, and we very much look forward to hearing from you about it.

Please see the document itself for additional detail, and a more definitive and comprehensive description of our proposed agreement. To the extent you perceive any daylight between this email summary and the actual draft language attached to this email, you should rely on the actual draft. (To be clear, no such daylight is intended.)

I look forward to hearing from you as soon as possible. I am hopeful we can file this (or something very similar to this) tomorrow, without much further ado, but if there are lingering areas of disagreement, please let me know as soon as you can, so we can (hopefully) resolve them before tomorrow afternoon (or decide that we cannot resolve them, such that some separate drafting is necessary). As you'll also see in the draft, our proposed language also leaves open the possibility that, if necessary, Plaintiffs could seek additional relief later. So even if there are some lingering concerns, perhaps we can agree to disagree on those for now, get this on file, and then defer those conversations to another day.

In any case, I am available to discuss at your earliest convenience. You have my phone number (below), which forwards to my cell phone. Don't hesitate to reach out at any time in the next 24 hours, including late tonight or early tomorrow morning.

Best regards,

Stephen M. Pezzi

Trial Attorney

United States Department of Justice

Civil Division - Federal Programs Branch

1100 L Street NW

Washington, DC 20005

(202) 305-8576 | stephen.pezzi@usdoj.gov